SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 815.

WILLIAM E. JOHNSON, PLAINTIFF IN ERROR

vs.

THE STATE OF MARYLAND.

IN ERROR TO THE CIRCUIT COURT OF FREDERICK COUNTY, STATE OF MARYLAND.

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1 STATE OF MARYLAND, FREDERICK COUNTY, TO WIT.

In the Circuit Court for Frederick County:

At a circuit court of the Sixth Judicial Circuit of the State of Maryland, composed of the counties of Frederick and Montgomery, begun and held at the courthouse in Frederick, in and for Frederick County, on the second Monday of December, being the eighth day of the same month, in the year of our Lord, one thousand nine hundred and nineteen.

Were present: Honorable Hammond Urner, chief judge; Honorable Glenn H. Worthington, associate judge; William O. Wertenbaker, Esquire, sheriff; and Eli G. Haugh, clerk.

In the record of proceedings of said court among others were the following:

WILLIAM E. JOHNSON *vs.* STATE OF MARYLAND	No. 5 Criminal Appeals, December Term, 1919. Appeal from Justice Alban M. Wood.

The warrant when presented to the court on appeal was in the following words and figures, to wit:

"STATE OF MARYLAND, *Frederick County, to wit.*

"*To Edgar Mercer, deputy sheriff:*

"Whereas complaint having been made before me, the subscriber, one of the justices of the peace of the State of Maryland in and for the said county, upon the information and oath of R. L. Frizzell, who charges W. E. Johnson violating sec. 143A of Maryland automobile law by operating motor vehicle without a license on January 20.

"You are therefore hereby commanded immediately to apprehend the said W. E. Johnson and bring him before me, the subscriber, or some other justice of the peace of said State and county, to be dealt with according to law.

"Hereof fail not and have you then and there this warrant.

"Given under my hand and seal this 23 day of January, in the year 1919.

"W. E. FALCONER. [SEAL.]"

2 Upon application of the State's attorney for leave to amend the said warrant, said leave was granted over the objection of the United States district attorney, and the warrant made to read as follows as amended:

"STATE OF MARYLAND, *Frederick County, to wit.*

"*To Edgar Mercer, deputy sheriff:*

"Whereas complaint having been made before me, the subscriber, one of the justices of the peace of the State of Maryland in and for the said county, upon the information and oath of R. L. Frizzell, who charges William E. Johnson with violating sec. 143 of the Maryland

motor vehicle law by operating a motor vehicle upon a highway of the State of Maryland, at Frederick County, State of Maryland, aforesaid, on January 20, 1919, without having first obtained a license for said purpose.

"You are therefore hereby commanded immediately to apprehend the said W. E. Johnson and bring him before me, the subscriber, or some other justice of the peace of said State and county, to be dealt with according to law.

"Hereof fail not and have you then and there this warrant.

"Given under my hand and seal this 23rd day of January, in the year 1919.

"W. E. FALCONER. [SEAL.]"

After the granting of the amendment, the United States district attorney noted an exception to the ruling of the court.

Docket entries of justice of the peace.

STATE OF MARYLAND *vs.* WILLIAM E. JOHNSON.	Before Alban M. Wood, a justice of the peace, election district No. 2, in Frederick County, State of Maryland.

Warrant issued January 23, 1919, upon the information of R. E. Frizell, deputy motor vehicle commissioner, who charged W. E. Johnson with having on the 20th day of January, 1919, in Frederick County, State of Maryland, driven an automobile on the highways of said State without a license.

Trial had January 27th, 1919. Verdict, "Guilty." Judgment, "Guilty." The defendant William E. Johnson was sentenced to pay a fine of ten dollars and costs.

3 February 5, 1919, the defendant, through Samuel K. Dennis, U. S. district attorney, prays an appeal.

Witness my hand and seal.

ALBAN M. WOOD, *J. P.* [SEAL.]

True copy of my docket.

ALBAN M. WOOD, [SEAL.]
Justice of the Peace.

Fine of $10.00 and $3.45 costs paid by the defendant.
(Filed April 19, 1919.)

Motion to quash.

STATE OF MARYLAND *vs.* WILLIAM E. JOHNSON.	In the Circuit Court for Frederick County. No. 5 Crim. Apps.

MOTION TO QUASH.

The traverser, William E. Johnson, by his attorney, Samuel K. Dennis, United States attorney for the district of Maryland, files

herewith his motion to quash the information and warrant sworn out against him in the above-entitled cause as follows:

First.

That section 143 of article 56, Code of Public General Laws of Maryland (Bagby's Code, vol. 4), for alleged violation of which act the information has been filed and the warrant issued in this case, is contrary to the laws and Constitution of the United States in that it constitutes an unlawful and unauthorized attempt to regulate and determine the qualifications of officers and agents of the United States as a condition precedent to the exercise of their official powers and the discharge and performance of their official duties in transporting the United States mail upon the highways of the State of Maryland.

Second.

That said act by providing for the arrest of persons alleged to have violated said act, notwithstanding they may be then and there solely engaged to transport, collect, and deliver the United States mails, impairs the Government's functions and impedes its Postal Establishment.

4 Third.

That the United States must possess the right to determine the qualifications of its own officers and employees detailed for duty in the carriage and transportation of the United States mails, and when solely engaged thereon, and said act is null and void in so far as it purports to require such agents and employees of the United States to submit to and undergo an examination by the commissioner of motor vehicles for the State of Maryland, and to secure his approval as a condition precedent to performing the duties required of such agents and employees, to wit, operating automobiles for the carriage of the United States mail matter upon the highways of the State of Maryland.

Fourth.

That said act is null and void in that it is not a proper use or exercise of the police power of the State of Maryland in so far as it attempts to impose a tax upon and to determine the qualifications of the officers and agents of the United States as a condition precedent to the performance of their official duties and governmental functions when solely engaged in transporting the United States mails over the highways of the State of Maryland.

Fifth.

That the warrant and information charges the traverser with the commission of no offense within the State of Maryland or Frederick County.

SAMUEL K. DENNIS,
United States Attorney for the District of Maryland,
Traverser's Attorney.

(Filed January 3, 1920.)

5 *Pleas.*

STATE OF MARYLAND *versus* WILLIAM E. JOHNSON.	In the Circuit Court for Frederick County. No. 5 Crim. App.

The traverser, William E. Johnson, by Samuel K. Dennis, United States attorney for the district of Maryland, files herewith his seven special and one general pleas in the above cause, viz:

First.

That at the time and place the traverser is and was charged and accused in the above cause with the alleged offense of operating a motor vehicle without first having paid for and obtained an operator's or chauffeur's license, at the cost and expense of three dollars, from the commissioner of motor vehicles of Maryland, the traverser, William E. Johnson, was then and there in the employ of, and the servant and agent of the United States of America, to wit, the driver of a motor truck for the Post Office Establishment of the United States, and that he was then and there solely and only engaged in the regular and proper performance of his public and official duties for and on behalf of the United States of America, to wit, he then and there was driving and operating a motor vehicle upon and along the public highways of said State of Maryland and county of Frederick for the transportation, carriage, and conveyance with reasonable dispatch and proper care of the United States mail, and that the said Alban M. Wood, purporting to act for and on behalf of the State of Maryland, as a justice of the peace, was without power to impose any fine, penalty, or punishment upon the traverser whatsoever in the premises for operating said motor vehicle without having first obtained a license from the commissioner of motor vehicles of Maryland.

Second.

That the traverser has committed no offense and is charged with no offense within the power and jurisdiction of the said Alban M. Wood, justice of the peace in and for the county of Frederick, State of Maryland, to determine.

6 Third.

That the said Alban M. Wood, acting as justice of the peace in and for the State of Maryland and county of Frederick, under and by virtue of the laws of the State of Maryland, exceeded his legal powers in the premises in that heretofore, to wit, on or about the 27 day of January, 1919, he, acting as a justice of the peace aforesaid, imposed a fine of ten dollars and costs upon the traverser, he being then and there an employee of the United States and acting for and

on behalf of the United States, on the charge of violating chapter 687 of the Acts of the General Assembly of Maryland, session 1916, to wit, operating a motor vehicle, employed and used by the United States in the collection, carriage, and transfer of the United States mail, without first having obtained a license from the commissioner of motor vehicles of Maryland.

Fourth.

That the traverser at the times and places mentioned in the charge of operating a motor truck without first having paid for and obtained an operator's license from the commissioner of motor vehicles for the State of Maryland was then and there acting for and on behalf of the Post Office Establishment of the United States, and in pursuance of the orders of his superior officers in said Post Office Establishment by driving and operating a motor vehicle then in the employ of the United States in said State and county and engaged in the carriage, transportation, transfer, and delivery of the United States mail.

Fifth.

That at the time and place the traverser is and was charged and accused in the above cause with the alleged offense of operating a motor vehicle without first having paid for and obtained an operator's or chauffeur's license, at the cost and expense of three dollars, from the commissioner of motor vehicles of Maryland, the traverser, William E. Johnson, was then and there in the employ of and the servant and agent of the United States of America, to wit, the driver of a motor truck for the Post Office Establishment of the United States, and that he was then and there solely and only engaged in the regular and proper performance of his public and official
7 duties for and on behalf of the United States of America, to wit, he then and there was driving and operating a motor vehicle upon and along the public highways of said State of Maryland and county of Frederick for the transportation, carriage, and conveyance with reasonable despatch and proper care of the United States mail, and that this honorable court is without power in the premises to impose any fine, penalty, or punishment upon the traverser whatsoever for operating said motor vehicle without having first obtained a license for the purpose.

Sixth.

That the traverser has committed no offense and is charged with no offense within the power of this honorable court to hear and determine against the traverser.

Seventh.

That for this honorable court to fine or otherwise penalize this traverser for his failure, as a condition precedent to the performance

of his official duties, to pay an operator's license tax of three dollars to the commissioner of motor vehicles of Maryland (said traverser then and there being in the employ of the United States and then and there engaged solely in the performance of his official duty as driver of an automobile mail truck or vehicle employed and used by the United States in the transportation of mail) is to tax and burden the lawful means and operations employed by the United States in the proper execution of its legitimate power and duty to transport the mails.

Eighth.

The traverser pleads not guilty.

SAM'L K. DENNIS,
U. S. Atty. for the District of Maryland, Attys. for Traverser.

(Filed January 3, 1920.)

And thereupon on said 3rd day of January, 1920, the State's attorney for Frederick County, Maryland, demurs to 1, 2, 3, 4, 5, 6, & 7, pleas of appellant, and said demurrer heard before court (Chief Judge Hammond Urner and Associate Judge Glenn H. Worthington) and same day court sustains demurrer to said seven pleas.

8 It was stipulated in open court at the trial of the above cause, between the United States attorney for the district of Maryland, and the attorney general of the State of Maryland, and the State's attorney for Frederick County, that the amendment to the original warrant made by leave of the court was properly made, and that the following be admitted as the facts in the case, no other testimony being offered by either side, viz:

"It is admitted that William E. Johnson was, at the time he was charged with operating this machine, an employee of the Post Office Department of the United States; that he was then and there engaged in driving a motor truck, belonging to the United States, and in the transportation of mail from Mt. Airy to Washington upon and along the public highways of Frederick County, in the State of Maryland.

It is admitted on behalf of the United States that he had not complied with the provisions of section 143 of article 56 of the Maryland Code in that he had never presented himself to the commissioner of motor vehicles for Maryland for an examination and demonstration of his abilities as chauffeur, and that he was operating this motor vehicle at this time without first having obtained a license from the commissioner of motor vehicles of the State of Maryland, nor had he any license issued by any other State or the District of Columbia.

The State admits that at the time he was operating said motor vehicle he was doing so in obedience to the instructions of his superior officer of the Post Office Department of the United States and in the performance of his official duty."

9 And on the said 3rd day of January, 1920, issues were joined and case submitted for trial to court (Chief Judge Hammond Urner and Associate Judge Glenn H. Worthington) and same day court finds traverser guilty.

Motion for arrest of judgment.

STATE OF MARYLAND *vs.* WILLIAM E. JOHNSON. | In the Circuit Court for Frederick County. No. 5 Crim. App.

MOTION FOR ARREST OF JUDGMENT.

The traverser, by Samuel K. Dennis, U. S. attorney for the district of Maryland, his attorney, moves the court to arrest judgment upon the verdict rendered in the above-entitled cause for the following reasons, viz:

First.

That section 143 of article 56, Code of Public General Laws of Maryland (Bagby's Code, vol. 4), under which the verdict of guilty was heretofore returned against the traverser in the above-entitled cause, is in conflict with the Constitution of the United States and, therefore, is null and void in so far as it purports to empower the commissioner of motor vehicles of the State of Maryland to (a) require for the benefit of said State the payment of a license fee from the traverser of three dollars, (b) and to require an actual demonstration of the qualifications of the person applying for such license as a condition precedent to the traverser, among others, operating in the discharge solely of his official duty as an agent and employee of the United States, a motor vehicle for the carriage of the mails of the United States over and upon the highways of the State of Maryland.

Second.

That this honorable court is without power to enter judgment against the traverser in the premises.

Third.

That the act under which the traverser was convicted is contrary to the Constitution of the United States and is null and void in so far as it attempts to authorize the imposition of a license fee upon the traverser in the premises is concerned, and subjects him to
10 arrest and to punishment for operating motor vehicle in the premises when acting for and on behalf of the Post Office Establishment of the United States.

SAM'L K. DENNIS,
United States Attorney for the District of Maryland,
Attorney for the Traverser.

1920, January 3.—Judgment, guilty, by the court, and traverser sentenced to pay a fine of ten dollars and costs.

(Filed January 3, 1920.)

WILLIAM E. JOHNSON
vs.
THE STATE OF MARYLAND.

In the Circuit Court for Frederick County, Maryland. No. 5 Criminal Appeals, December Term, 1919.

Petition for writ of error.

Now comes William E. Johnson, plaintiff in error in this cause, by his attorney, Samuel K. Dennis, United States attorney for the district of Maryland, and says that on the third day of January, 1920, the Honorable Hammond Urner, chief judge, and Honorable Glenn H. Worthington, associate judge of this court, entered judgment and sentence against the plaintiff in error, in rendering which judgment or sentence certain errors were committed, to the prejudice of the plaintiff in error, as will in more detail appear hereafter:

That on or about the twenty-third day of January, 1919, one William E. Johnson, then and there an employee of the Post Office Establishment of the United States, and while in the actual and sole performance of his duty as an employee of the Post Office Establishment of the United States, was then and there engaged in operating a motor truck, loaded with mail in transit from Mt. Airy, in the State of Maryland, to Washington, D. C., and said motor truck was the property of the United States of America, and used for the carriage of mail matter; and that the said William E. Johnson, when temporarily operating and conducting said motor truck as aforesaid, in obedience to the orders of his superior officers in the Postal Service of the United States, over and upon the highways of the State of Maryland, within said County of Frederick, for the carriage and transportation of the United States mails, was arrested within said county and State on the charge of operating said motor truck on the highways of the State of Maryland without first having procured an operator's or chauffeur's license from the commissioner of motor vehicles
11 for the State of Maryland, required by section 143, article 56, Code of Public General Laws of Maryland, Bagby's Code, vol. 4.

That the plaintiff in error, William E. Johnson, was thereafter brought before Alban M. Wood, a justice of the peace of said county, and fined in the sum of ten dollars for the violation of said section 143 of article 56 of the Maryland Code of Public General Laws on the twenty-seventh day of January, 1919, after having been found guilty of the charge set out in a warrant issued by W. E. Falconer, a justice of the peace of said county and State on said first date, which said warrant was corrected and amended at the request of the State's attorney for Frederick County by the honorable the judges of this court at the hearing on appeal.

Upon his conviction, the plaintiff in error filed his appeal to this court, and the record was duly transferred to the criminal appeals and docketed in this court.

That on the third day of January, 1920, the Honorable Hammond Urner, chief judge, and Honorable Glenn H. Worthington, associate

judge, being the judges before whom the case was presented and tried, and before the plaintiff in error had entered his pleas to the charge, overruled the motion to quash the warrant and information, which motion to quash the plaintiff in error then filed, and in which it was alleged:

That section 143 of article 56, Code of Public General Laws of Maryland (Bagby's Code, vol. 4), for alleged violation of which act the information has been filed and the warrant issued in this case, is contrary to the laws and Constitution of the United States in that it constitutes an unlawful and unauthorized attempt to regulate and determine the qualifications of officers and agents of the United States as a condition precedent to the exercise of their official powers and the discharge and performance of their official duties in transporting the United States mail upon the highways of the State of Maryland, and by providing for the arrest of persons alleged to have violated said act, notwithstanding they may be then and there solely engaged to transport, collect, and deliver the United States mails, impairs the Government's function and impedes its Postal Establishment. That the United States must possess the right to determine the qualifications of its own officers and employees
12 detailed for duty in the carriage and transportation of the United States mails, and when solely engaged thereon, and said act is null and void in so far as it purports to require such agents and employees of the United States to submit to and undergo an examination by the commissioner of motor vehicles for the State of Maryland, and to secure his approval as a condition precedent to performing the duties required of such agents and employees, to wit, operating automobiles for the carriage of the United States mail matter upon the highways of the State of Maryland. That said act is null and void in that it is not a proper use or exercise of the police power of the State of Maryland in so far as it attempts to impose a tax upon and determine the qualifications of the officers and agents of the United States as a condition precedent to the performance of their official duties and governmental functions when solely engaged in transporting the United States mails over the highways of the State of Maryland.

The plaintiff in error then filed seven special pleas and one general plea, in which he alleged:

First.

That at the time and place the traverser is and was charged and accused in the above cause with the alleged offense of operating a motor vehicle without first having paid for and obtained an operator's or chauffeur's license, at the cost and expense of three dollars, from the commissioner of motor vehicles of Maryland, the traverser, William E. Johnson, was then and there in the employ of and the servant and agent of the United States of America, to wit, the driver of a motor truck for the Post Office Establishment of the United

States, and that he was then and there solely and only engaged in the regular and proper performance of his public and official duties for and on behalf of the United States of America, to wit, he then and there was driving and operating a motor vehicle upon and along the public highways of said State of Maryland and county of Frederick for the transportation, carriage, and conveyance with reasonable despatch and proper care of the United States mail, and that the said Alban M. Wood, purporting to act for and on behalf of the State of Maryland as a justice of the peace, was without power to impose any fine, penalty, or punishment upon the traverser
13 whatsoever in the premises for operating said motor vehicle without having first obtained a license from the commissioner of motor vehicles of Maryland.

Second.

That the traverser has committed no offense and is charged with no offense within the power and jurisdiction of the said Alban M. Wood, justice of the peace in and for the county of Frederick, State of Maryland, to determine.

Third.

That the said Alban M. Wood, acting as justice of the peace in and for the State of Maryland and county of Frederick, under and by virtue of the laws of the State of Maryland, exceeded his legal power in the premises in that heretofore, to wit, on or about the twenty-seventh day of January, 1919, he, acting as a justice of the peace aforesaid, imposed a fine of ten dollars and costs upon the traverser, he being then and there an employee of the United States and acting for and on behalf of the United States, on the charge of violating chapter 687 of the acts of the General Assembly of Maryland, session 1916, to wit, operating a motor vehicle employed and used by the United States in the collection, carriage, and transfer of the United States mail without first having obtained a license from the commissioner of motor vehicles of Maryland.

Fourth.

That the traverser at the times and places mentioned in the charge of operating a motor truck without first having paid for and obtained an operator's license from the commissioner of motor vehicles for the State of Maryland, was then and there acting for and on behalf of the Post Office Establishment of the United States, and in pursuance of the orders of his superior officers in said Post Office Establishment by driving and operating a motor vehicle then in the employ of the United States in said State and county and engaged in the carriage, transportation, transfer, and delivery of the United States mail.

Fifth.

That at the time and place the traverser is and was charged and accused in the above cause with the alleged offense of operating a motor vehicle without first having paid for and obtained an operator's or chauffeur's license, at the cost and expense of three
14 dollars, from the commissioner of motor vehicles of Maryland, the traverser, William E. Johnson, was then and there in the employ of and the servant and agent of the United States of America, to wit, the driver of a motor truck for the Post Office Establishment of the United States, and that he was then and there solely and only engaged in the regular and proper performance of his public and official duties for and on behalf of the United States of America, to wit, he then and there was driving and operating a motor vehicle upon and along the public highways of said State of Maryland and county of Frederick for the transportation, carriage, and conveyance, with reasonable despatch and proper care, of the United States mail, and that this honorable court is without power in the premises to impose any fine, penalty, or punishment upon the traverser whatsoever for operating said motor vehicle without having first obtained a license for the purpose.

Sixth.

That the traverser has committed no offense and is charged with no offense within the power of this honorable court to hear and determine against the traverser.

Seventh.

That for this honorable court to fine or otherwise penalize this traverser for his failure, as a condition precedent to the performance of his official duties, to pay an operator's license tax of three dollars to the commissioner of motor vehicles of Maryland (said traverser then and there being in the employ of the United States and then and there engaged solely in the performance of his official duty as driver of an automobile mail truck or vehicle employed and used by the United States in the transportation of mail) is to tax and burden the lawful means and operations employed by the United States in the proper execution of its legitimate power and duty to transport the mails.

Eighth.

The traverser pleads not guilty.

The State demurred to the seven special pleas. The court sustained the demurrer as to each and every of said seven pleas, and the plaintiff in error went to trial on the general issue plea of not guilty, and was forthwith tried before the court without a jury, and the honorable judges presiding found a verdict of guilty.

15 Thereupon and before sentence was imposed or judgment entered on the verdict, the plaintiff in error filed his motion in arrest of judgment, wherein it was alleged:

That section 143 of article 56, Code of Public General Laws of Maryland (Bagby's Code, vol. 4), under which the verdict of guilty was heretofore returned against the traverser in the above-entitled cause, is in conflict with the Constitution of the United States and, therefore, is null and void in so far as it purports to empower the commissioner of motor vehicles of the State of Maryland to (a) require for the benefit of said State the payment of a license fee from the traverser of three dollars (b) and to require an actual demonstration of the qualifications of the person applying for such license as a condition precedent to the traverser, among others, operating in the discharge solely of his official duty as an agent and employee of the United States, a motor vehicle for the carriage of the mails of the United States over and upon the highways of the State of Maryland.

That this honorable court is without power to enter judgment against the traverser in the premises.

That the act under which the traverser was convicted is contrary to the Constitution of the United States and is null and void in so far as it attempts to authorize the imposition of a license fee upon the traverser in the premises is concerned, and subjects him to arrest and to punishment for operating a motor vehicle in the premises when acting for and on behalf of the Post Office Establishment of the United States.

The said motion in arrest of judgment was overruled, and judgment entered on the said third day of January, 1920, affirming the sentence of the said justice of the peace imposing a fine of ten dollars upon the said William E. Johnson.

That under article 56 of the Code of Public General Laws of Maryland, known as the motor vehicle law, no appeal from the decision of this court from judgments rendered by it on appeal to it from justices of the peace is provided, and under both the laws and practice of the State of Maryland the decision rendered in this case is final and conclusive, and is the decision of the highest court

16 in which an appeal of writ of error would be in this case.

Wherefore the plaintiff in error prays the allowance of a writ of error directed to this court as the highest court of the State in which a decision in this cause could have been had, returnable to the Supreme Court of the United States at Washington, District of Columbia, for the correction of the errors complained of which are set out in the form of assignments of errors filed with this petition, and that the transcript of the record and all proceedings and papers in this cause duly authenticated may be sent to the Supreme Court of the United States.

SAM'L K. DENNIS,
United States Attorney for Plaintiff in Error.

(Filed January 31, 1920.)

WILLIAM E. JOHNSON
vs.
STATE OF MARYLAND
In the Circuit Court for Frederick County, Maryland. No. 5 Criminal Appeals.

Assignment of errors.

The plaintiff in error in this case, in connection with a petition for the issuance of the writ of error, assigns as grounds of error occurring by reason of the affirming sentence rendered by the Circuit Court of Frederick County in this case, the following:

1. That the court erred in overruling the motion to quash filed by plaintiff in error.

2. The court erred in sustaining the State's demurrer to the first, second, third, fourth, fifth, sixth, and seventh special pleas filed by the plaintiff in error.

3. That the court erred in overruling the motion in arrest of judgment filed by plaintiff in error.

17 4. That the court erred in affirming the sentence imposed upon the plaintiff in error by the justice of the peace for Frederick County under section 143 of article 56, Code of Public General Laws of Maryland, whereby the plaintiff in error was fined ten dollars for temporarily operating a motor truck owned by the United States of America in obedience to the orders of his superior officers and solely in the performance of his official duty as an employee of the Post Office Establishment of the United States in transporting the United States mail from Mount Airy, in said State and county, to Washington, D. C., over the highways of said State, without first having submitted to an examination by and obtained from the commissioner of motor vehicles of the State of Maryland an operator's or chauffeur's license, in that said section 143 of article 56 in so far as it operates upon the servants and employees of the Postal Establishment of the United States when operating solely in the performance of their official duty motor vehicles for the transportation of the United States mails is contrary to and in conflict with the Constitution of the United States of America in that—

Section 143 of article 56, Code of Public General Laws of Maryland (vol. 4), is contrary to the laws and Constitution of the United States in that it constitutes an unlawful and unauthorized attempt to regulate and determine the qualifications of officers and agents of the United States as a condition precedent to the exercise of their official powers and the discharge and performance of their official duties in transporting the United States mail upon the highways of the State of Maryland.

5. That the court erred in affirming the said sentence of the justice of the peace, and thereby sustaining the validity of said section 143 of article 56, Maryland Code of Public General Laws, in its application to the plaintiff in error, because said section is unconstitutional and void and contrary to article 8 of the Constitution of the United

States, because said act by providing for the arrest of persons alleged to have violated said act notwithstanding they may be
18 then and there solely engaged to transport, collect, and deliver the United States mails, impairs the Government's function and impedes its Postal Establishment.

6. That the court erred in affirming the said sentence of the justice of the peace, and thereby sustaining the validity of said section 143, article 56, Code of Public General Laws of Maryland, in its application to the plaintiff in error, because the United States must exercise and possess the exclusive right to determine the qualifications of its own officers and employees detailed for duty in the carriage and transportation of the United States mails, and when solely engaged thereon, and said act is null and void in so far as it purports to regulate such agents and employees of the United States to submit to and undergo an examination by the commissioner of motor vehicles for the State of Maryland, and to secure his approval as a condition precedent to performing the duties required of such agents and employees, to wit, operating automobiles owned by the United States for the carriage of the United States mail matter upon the highways of the State of Maryland.

7. That the court erred in affirming said sentence of the justice of the peace, thereby upholding the validity of said section 143 of article 56, Code of Public General Laws, in its application to the plaintiff in error, because said act is null and void in that it is not a proper use or exercise of the police power of the State of Maryland in so far as it attempts to impose a tax upon and to determine the qualifications of the officers and agents of the United States as a condition precedent to the performance of their official duties and governmental functions when solely engaged in transporting the United States mails over the highways of the State of Maryland in motor vehicles owned by the United States.

8. That the court erred in affirming the said sentence of the justice of the peace, and thereby sustaining the validity of said section 143 of article 56, Maryland Code of Public General Laws, in its application to the plaintiff in error because said section is uncon-
19 stitutional and void in that by exacting a license fee for the benefit of the State of Maryland of three dollars from the plaintiff in error as a condition precedent to permitting him, otherwise than under pain of fine and punishment, to use the highways of said State, whether owned by the State or otherwise, in operating a motor vehicle owned by the United States for the transportation of the United States mails, is in effect and in fact and in substance to tax and burden for the benefit of the State the means employed by the United States in the proper execution of its legitimate powers and duties.

SAMUEL K. DENNIS,
United States Attorney for the District of Maryland,
for Plaintiff in Error.

(Filed January 31, 1920.)

Service of the aforegoing petition and assignment of errors, with copy thereof, is hereby admitted.

AARON R. ANDERS,
States Attorney for Frederick Co., State of Md.

(Filed January 31, 1920.)

Order.

Upon consideration of the petition for writ of error in the above-entitled cause, and of the assignments of error hereto attached, it is this 24th day of January, 1920, ordered that the writ of error prayed for be allowed.

HAMMOND URNER, *Chief Judge,*
GLENN H. WORTHINGTON, *Associate Judge,*
Circuit Court for Frederick County.

(Filed January 31, 1920.)

20 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the Circuit Court for Frederick County, State of Maryland, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court for Frederick County, Maryland, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between William E. Johnson, plaintiff in error, and the State of Maryland, defendant in error, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction
21 of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said William E. Johnson, plaintiff in error, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with

this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws, and customs of the United States, should be done.

Witness the honorable Edward D. White, Chief Justice of the United States, the twenty-fourth day of January, in the year of our Lord one thousand nine hundred and twenty.

ARTHUR L. SPAMER,
Clerk of the District Court of the United States for the District of Maryland.

Allowed by
HAMMOND URNER,
Chief Judge.
GLENN H. WORTHINGTON,
Associate Judge, Circuit Court for Frederick County, Maryland.

(Indorsed:) Filed January 31, 1920.

22 UNITED STATES OF AMERICA, *ss:*
To the State of Maryland, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the Circuit Court for Frederick County, State of Maryland, wherein William E. Johnson is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Hammond Urner, chief judge of the Circuit Court for Frederick County, State of Maryland, this 31st day of January, in the year of our Lord one thousand nine hundred and twenty.

HAMMOND URNER,
Chief Judge.

Service of the above citation acknowledged this 31st day of January, 1920.

AARON R. ANDERS,
State's Attorney for Frederick County, Md.

23 *Opinion of the court, delivered orally by Chief Judge Hammond Urner.*

The demurrer to the first seven pleas will be sustained. In this case the question raised involves the postal power of the Federal

Government and the police power of the State. As we understand the statute requiring a license to be obtained by the operators of automobiles upon the public highways of the State, it does not involve any attempt upon the part of the State of Maryland to prescribe the qualifications of postal employees for the performance of their official duties. The statute was passed in the exercise of the police power of the State for the protection of the public safety. The main purpose of the requirement as to the obtention by operators of automobiles of a license from the State is to obtain an assurance in that way as to their competency to operate automobiles upon the public highways. It is recognized that the use of motor vehicles has elements of danger which make it desirable that there should be some regulation of their use, and it seems to be entirely reasonable that the competency of those undertaking to make use of these dangerous agencies should be determined before they are permitted to use them upon the public highways of the State. Of course legislation, even for such a purpose, ought not to be carried to such an extent as to involve an unreasonable interference with the exercise of the postal power of the Federal Government. That power and the police power of the State can be exercised in perfect harmony with each other and in such a way as to carry out the essential purposes of both powers. The opinions of Attorneys General Gregory and Wickersham apparently are entirely consistent with our conclusion. It seems to be a proper case for the application of the rule of reason. If this statute involved any unreasonable interference with the convenient exercise of the postal power of the Government a very different question would be presented, but there is no indication of any effort to discriminate as between postal employees and other citizens of the State in the use of the public highways. All are subjected to the same regulation. There is no heavy license
24 fee exacted. Apparently it is only sufficient to pay the ordinary inspection and regulative expenses. A regulation which simply seeks to make it certain that only persons who are competent to operate automobiles shall be permitted to do so upon the public highways of Maryland could hardly be characterized as unreasonable. It is such a simple and practical process required by statute to be pursued by all persons operating automobiles upon the public highways that it can hardly be held to be an interference with the Federal postal employees in the performance of their duties.

This statement is sufficient to indicate the ground upon which we hold that the demurrer should be sustained.

25 *Docket entries.*

WILLIAM E. JOHNSON
vs.
STATE OF MARYLAND.

No. 5 Criminal Appeals, December Term, 1919. In the Circuit Court for Frederick County. Appeal from Justice Alban M. Wood.

1919, April 19.—2 papers returned to court by Alban M. Wood, J. P., and filed. Judgment below January 27, 1919, "Guilty," and fined $10.00 and costs, and defendant, William E. Johnson, through Samuel K. Dennis, U. S. district attorney, prays an appeal.

1919, April 19.—Alban M. Wood, J. P., deposits in court $10.00 fine and $3.45 costs.

1920, January 3.—Motion of State's attorney to amend warrant, leave granted by court, and amendment made on original warrant.

1920, January 3.—Motion of appellant, William E. Johnson, to quash warrant filed, and said motion overruled by court.

1920, January 3.—Pleas of appellant, William E. Johnson, filed, and State's attorney demurs to 1st, 2nd, 3rd, 4th, 5th, 6th, and 7th pleas of appellant, and said demurrer heard before court (Chief Judge Hammond Urner and Associate Judge Glenn H. Worthington), and same day court sustains demurrer to said seven pleas.

1920, January 3.—Issues joined and case submitted for trial to court (Chief Judge Hammond Urner and Associate Judge Glenn H. Worthington), and same day court finds traverser guilty.

1920, January 3.—Motion of traverser in arrest of judgment filed and motion overruled by court.

1920, January 3.—Judgment guilty, and traverser sentenced to pay a fine of ten dollars and costs.

1920, January 31.—Petition for writ of error, assignments of errors, admission of service and order of court thereon filed.

1920, January 31.—Original writ of error issued by Arthur L. Spamer, clerk of the district court of the United States, filed.

1920, January 31.—Copy writ of error filed.

1920, January 31.—Citation to State of Maryland, issued by Chief Judge Hammond Urner, and service acknowledged by Aaron R. Anders, State's attorney for Frederick County, Md.

SAMUEL K. DENNIS, Esq.,
U. S. Attorney,
RENO S. HARP, Esq.,
Attorneys for Appellant (Johnson).
ALEXANDER ARMSTRONG, Esq.,
Attorney General of Maryland,
AARON R. ANDERS, Esq.,
State's Attorney for Frederick Co., Md.,
LEO WEINBERG, Esq.,
Attorneys for State of Maryland.

Appellant's costs, $8.75. State's cost, $13.15. Costs of record, $7.75. Costs before J. P., $3.45.

26 STATE OF MARYLAND, *Frederick County, to wit:*

In pursuance of the command of the writ of error within, I, Eli G. Haugh, Clerk of the Circuit Court of the Sixth Judicial Circuit of the State of Maryland, composed of the counties of Frederick and Montgomery, herewith transmit a true copy of the record, the assignments of error, and all of the proceedings in the case of William E. Johnson vs. State of Maryland, lately pending in the said Circuit Court for Frederick County, Maryland, under my hand and the seal of the said court.

Witness my official signature and the seal of the said Circuit Court at Frederick, Frederick County, Maryland, this 21st day of February, in the year of our Lord one thousand nine hundred and twenty.

[SEAL.] ELI G. HAUGH,
Clerk of the Circuit Court for Frederick County, Md.

STATE OF MARYLAND, *Frederick County, to wit:*

I hereby certify that the foregoing is a true copy of the minutes of the proceedings in the above-entitled cause in the Circuit Court for Frederick County, Maryland.

In testimony whereof, I hereunto set my hand and affix the seal of the Circuit Court for Frederick County, at Frederick, Maryland, this 21st day of February, A. D. 1920.

[SEAL.] ELI G. HAUGH,
Clerk of the Circuit Court for Frederick County, Md.

(Indorsed on cover:) File No. 27570. Maryland, Frederick County, Circuit Court. Term No. 815. William E. Johnson, plaintiff in error, vs. the State of Maryland. Filed March 22d, 1920. File No. 27570.

In the Supreme Court of the United States.

OCTOBER TERM, 1919.

WILLIAM E. JOHNSON, PLAINTIFF IN error,
v.
THE STATE OF MARYLAND. } No. 815.

IN ERROR TO THE CIRCUIT COURT OF FREDERICK COUNTY, STATE OF MARYLAND.

MOTION BY THE PLAINTIFF IN ERROR TO ADVANCE.

Comes now the Solicitor General, on behalf of the plaintiff in error, and respectfully moves the advancement of the above-entitled cause for early hearing during the October, 1920, term of this court.

Johnson was arrested in January, 1919, upon a warrant issued by a justice of the peace, charging him with having operated a motor vehicle upon the highways of Frederick County, Maryland, without a license, in violation of section 143 of article 56, Code of Public General Laws of Maryland (Bagby's Code, vol. 4), which provides that no person shall operate a motor vehicle upon the highways of the State without first having obtained a license,

which the commissioner of motor vehicles is authorized to issue upon the passing of a satisfactory examination as to the operator's qualifications and the payment of the fee prescribed. A violation of said statute is made a misdemeanor punishable by fine.

Johnson was at the time an employee of the Post Office Department and was as such driving a motor truck conveying mail matter for said department from Mount Airy, Frederick County, Maryland, over the public highways of said county to Washington, D. C.

Johnson was brought to trial before a justice of the peace and, upon a verdict of guilty, was fined $10 and costs. Upon appeal to the Circuit Court of Frederick County, the highest court of the State to which a case of this character can be taken, a trial *de novo* was had and the judgment of the court of first instance was, in effect, affirmed.

At the trial in said Circuit Court the United States attorney, on behalf of the plaintiff in error, contended, principally, that said section 143 was unconstitutional and void (1) because it constituted an unlawful attempt by the State of Maryland to determine the qualifications of officers and agents of the United States as a condition precedent to the exercise of their official powers and the discharge and performance of their official duties in transporting the United States mail upon the highways of said State; (2) because it was contrary to section 8 of Article I

of the Constitution of the United States, in that by providing for the arrest of persons alleged to have violated its provisions, notwithstanding that they were then engaged in the transportation of the mails, it impeded the Federal Government in the exercise of its constitutional duty and function of maintaining and operating the postal establishment; (3) because it was not a proper exercise of the police power of the State in so far as it attempted to impose a tax upon officers and agents of the United States as a condition precedent to the performance of their official duties in the transportation of said mails; and (4) because it attempted to tax and burden for the benefit of the State the means employed by the United States in the proper execution of its legitimate powers and duties.

Either the employees of the Post Office Department must pay the licenses demanded or repeated and constant prosecutions will result. A large number of persons similarly situated are affected. An early hearing of this case is, therefore, deemed important.

Counsel for the defendant in error concur in this request for advancement.

ALEX. C. KING,
Solicitor General.

MAY, 1920.

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In the Supreme Court of the United States.

OCTOBER TERM, 1920.

WILLIAM E. JOHNSON, PLAINTIFF IN error,
v.
THE STATE OF MARYLAND. } No. 289.

IN ERROR TO THE CIRCUIT COURT OF FREDERICK COUNTY, STATE OF MARYLAND.

STATEMENT.

This case is here upon a writ of error to review a judgment of conviction involving a claimed violation of the automobile law of the State of Maryland. The warrant charges (R. pp. 1, 2)—

> William E. Johnson with violating sec. 143 of the Maryland motor-vehicle law by operating a motor vehicle upon a highway of the State of Maryland, at Frederick County, State of Maryland, aforesaid, on January 20, 1919, without having first obtained a license for said purpose.

The trial was had upon the following stipulation of facts, no other testimony being offered by either side (R. p. 6):

> It is admitted that William E. Johnson was, at the time he was charged with operating this machine, an employee of the Post

Office Department of the United States; that he was then and there engaged in driving a motor truck, belonging to the United States, and in the transportation of mail from Mt. Airy to Washington upon and along the public highways of Frederick County, in the State of Maryland.

It is admitted on behalf of the United States that he had not complied with the provisions of section 143, of article 56, of the Maryland Code, in that, he had never presented himself to the commissioner of motor vehicles for Maryland for an examination and demonstration of his abilities as chauffeur, and that he was operating this motor vehicle at this time without first having obtained a license from the commissioner of motor vehicles of the State of Maryland, nor had he any license issued by any other State, or the District of Columbia.

The State admits that at the time he was operating said motor vehicle he was doing so in obedience to the instructions of his superior officer of the Post Office Department of the United States and in the performance of his official duty.

By appropriate pleas the constitutionality of the statute, as applied to the facts of this case, was challenged, but a demurrer to said pleas was sustained, and a judgment of guilty entered. (R. pp. 4 *et seq.*) A motion in arrest of judgment, also based upon the alleged unconstitutionality of the statute, was overruled. (R. pp. 7 and 18.)

ANALYSIS OF DECISION BELOW.

The court below held the State statute applicable, upon substantially the following grounds (R. pp. 16 and 17):

1. Within the police power of the State.

2. Not aimed directly at Federal postal motor operators.

3. Is not an unreasonable interference with postal power of Federal Government.

4. The license fee is apparently only sufficient to pay the ordinary inspection and regulative expenses.

QUESTION PRESENTED.

The record presents squarely the question whether the State of Maryland possesses police or other power to require an employee of the Post Office Department, as a condition precedent to the performance of his official duties in that State, to undergo an examination by the State officers for the purpose of determining whether, in the statutory judgment of such officers, said post office employee possesses the requisite qualification to perform his official duty.

IMPORTANCE OF QUESTION.

There is scarcely an executive department of the Federal Government that does not employ automobiles in the transaction of some branch of its official business, the Army and Navy perhaps using the greater number. If Maryland's test of qualification must be satisfied by Federal operators, the tests of every other State must also be recognized.

Thus instead of the Federal appointing power determining the fitness of Federal employees to discharge their official duties, that power so far as automobile operators are concerned would be finally exercised by State officials.

PERTINENT STATE STATUTES.

Section 143 of article 56 of the Annotated Code of Maryland, as amended March 28, 1918, Laws of of Maryland, 1918, page 168, reads as follows:

> No person shall operate a motor vehicle upon any highway of this State until he first shall have obtained a license for the purpose. The commissioner shall require an actual demonstration of the qualifications of the person applying for such license, and in addition may refuse to issue the same if, in his judgment, the safety of the public would be jeopardized thereby, but said applicant shall have the right to appeal if license is refused, as provided elsewhere in this subtitle. Any person desiring to receive instructions in the operation of motor vehicles, except tractors or traction engines, shall first obtain an instruction license upon paying the sum of one dollar ($1.00) to the commissioner of motor vehicles, which such license shall entitle the person to whom it is issued to operate a motor vehicle only when accompanied by a regularly licensed operator for a period of thirty days from the date of its issue, at which time it shall expire and become void. At or before the expiration of the thirty-day period, persons licensed to receive instructions and desiring to obtain an operator's or

chauffeur's license must apply in person to the commissioner of motor vehicles, or one of his deputies, at the Baltimore office of the said commissioner, or any of the places throughout the State which the commissioner may designate for the convenience of applicants. Upon surrendering the instruction license and undergoing a satisfactory examination as to his qualifications, such person shall be entitled to receive the license applied for upon the payment of the fees provided by section 144 of this subtitle.

Section 145 of the same act reads as follows:

The commissioner of motor vehicles may, after due hearing, upon not less than three days' notice in writing, said notice to be sent by registered letter to the address given by the operator when applying for his license certificate, which shall constitute sufficient form of notice, suspend or revoke the operator's license issued to any person under section 143 of this subtitle for any cause which he may deem sufficient; but every applicant for an operator's license whose application shall be refused by said commissioner, and every licensee whose operator's license shall be suspended or revoked by said commissioner, may appeal to the circuit court of the county in which the licensee may live, or to the city court of Baltimore City if the licensee live there. The decision of the said court to be final, and such appeal not to operate as a stay of such order or decision by the commissioner.

PERTINENT FEDERAL STATUTES.

Section 161 of the Revised Statutes of the United States reads as follows:

> The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it.

Section 396 *idem* reads as follows:

> It shall be the duty of the Postmaster General:
>
> First. To establish and discontinue post offices.
>
> Second. To instruct all persons in the postal service with reference to their duties.
>
> Third. To decide on the forms of all official papers.
>
> Fourth. To prescribe the manner of keeping and stating accounts.
>
> Fifth. To enforce the prompt rendition of returns relative to accounts.
>
> Sixth. To control, according to law, and subject to the settlement of the sixth auditor, all expenses incident to the service of the department.
>
> Seventh. To superintend the disposal of the moneys of the department.
>
> Eighth. To direct the manner in which balances shall be paid over; issue warrants to cover money into the Treasury; and to pay out the same.

> Ninth. To superintend generally the business of the department, and execute all laws relative to the postal service.

The Act of March 1, 1884, chapter 9, 23 Stat. 3, Comp. Stat. 1918, section 7457, reads as follows:

> That all public roads and highways while kept up and maintained as such are hereby declared to be post routes.

Section 3965, R. S., reads as follows:

> The Postmaster General shall provide for carrying the mail on all post roads established by law as often as he, having due regard to productiveness and other circumstances, may think proper.

ARGUMENT.

I.

Statute of Maryland, as interpreted and applied by court below to the facts of case at bar, must be held invalid as an invasion of the constitutional freedom of Federal operations from State control or regulation.

In the solution of the question here presented, it must be firmly borne in mind that we have not here a case involving the mixing of Federal business with private or public-service business, but under the stipulated facts we have a Federal employee engaged solely in transporting United States mails by means of a Government-owned automobile truck of which he was the driver. Not only so, but he was appointed by the Postmaster General for this very

purpose, and at the time of the commission of his alleged offense was operating his vehicle in obedience to the instructions of his superior officer. (R. p. 6.) These facts, however, the court below deemed insufficient to withdraw him from the State statutory requirement that before he could officially operate his Federal-owned vehicle he must satisfy the State representative that he possessed the requisite qualifications to do so. Thus, while the appointment of plaintiff in error was made by the Postmaster General, and it is legally impossible to conceive of the exercise of the function of appointment separate and apart from the determination of fitness of the appointee (*Keim* v. *United States*, 177 U. S. 290, 293), and, further, while section 396, R. S., *supra*, charges the Postmaster General with the duty of instructing all persons in the Postal Service with reference to their duties, and on the record now before this court it must be assumed that the Postmaster General has discharged that duty in the case of plaintiff in error, nevertheless the court below insists that plaintiff in error must still satisfy the Maryland commissioner of motor vehicles of his qualifications to operate the motor vehicle involved, with the result that the judgment of the Postmaster General is subordinated to that of the State officer, for if said State officer is not satisfied that the plaintiff in error possesses the requisite qualifications, the license to operate is refused, and the Postmaster General must dismiss from his service one as to whose conduct and fitness he can find no fault.

And the State statute which produces this result, the court below says, in effect, does not involve "any unreasonable interference with the convenient exercise of the postal power of the Government." The court also adds that the State statute does not discriminate between postal employees and other citizens of the State. Both premises may, it is believed, be demonstrated to represent misconceptions of the applicable legal principles established by this court.

1. Reasonable State interference or regulation incompatible with Federal sovereignty.

To assert that there may be reasonable regulation of a Federal operation or agency by a State acting under its police power, is to deny the complete sovereignty of the Federal Government in the discharge of its constitutional functions.

As we shall endeavor to point out, in cases like that at bar, State regulative legislation has been held inapplicable not because it attempted an unreasonable regulation of a Federal employee or operation, but such legislation has been held invalid because of the supremacy of the Federal Government in the field to which the State law was sought to be applied. The fundamental controlling principles were early in the history of the country announced by this court in *M'Culloch* v. *Maryland*, 4 Wheat. 316, 429, 431, 432, 436. The court said:

> This is true. But to what source do we trace this right? It is obvious that it is an incident of sovereignty, and is coextensive

with that to which it is an incident. All subjects over which the sovereign power of a State extends are objects of taxation; but those over which it does not extend are, upon the soundest principles, exempt from taxation. This proposition may almost be pronounced self-evident.

The sovereignty of a State extends to everything which exists by its own authority, or is introduced by its permission; but does it extend to those means which are employed by Congress to carry into execution powers conferred on that body by the people of the United States? We think it demonstrable that it does not. Those powers are not given by the people of a single State. They are given by the people of the United States to a government whose laws, made in pursuance of the Constitution, are declared to be supreme. Consequently, the people of a single State can not confer a sovereignty which will extend over them.

* * * * *

Would the people of any one State trust those of another with a power to control the most insignificant operations of their State government? We know they would not. Why, then, should we suppose that the people of any one State should be willing to trust those of another with a power to control the operations of a government to which they have confided their most important and most valuable interests? In the legislature of the Union alone are all represented. The legislature of the Union alone, therefore, can be

trusted by the people with the power of controlling measures which concern all, in the confidence that it will not be abused. This, then, is not a case of confidence, and we must consider it as it really is.

* * * * *

If the controlling power of the State be established, if their supremacy as to taxation be acknowledged, what is to restrain their exercising control in any shape they may please to give it? Their sovereignty is not confined to taxation. That is not the only mode in which it might be displayed. The question is, in truth, *a question of supremacy;* and if the right of the States to tax the means employed by the General Government be conceded, the declaration that the Constitution, and the laws made in pursuance thereof, shall be the supreme law of the land is empty and unmeaning declamation.

* * * * *

The court has bestowed on this subject its most deliberate consideration. The result is a conviction that the States have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the General Government. This is, we think, the unavoidable consequence of that supremacy which the Constitution has declared.

While the above case involved an attempted exercise of Maryland's taxation power, the grounds upon which the decision of the court was rested equally forbid State regulation of a Federal operation like

that in the case at bar, for the opinion of the court makes it plain that it is not the manner, but the mere fact that the State has attempted to lay its hand upon a Federal instrumentality, that is constitutionally objectionable.

Again in *Tennessee* v. *Davis*, 100 U. S. 257, 263, the supremacy of the Federal Government in its constitutional domain was thus stated:

> The United States is a government with authority extending over the whole territory of the Union, acting upon the States and upon the people of the States. While it is limited in the number of its powers, so far as its sovereignty extends it is supreme. No State government can exclude it from the exercise of any authority conferred upon it by the Constitution, obstruct its authorized officers against its will, or withhold from it, for a moment, the cognizance of any subject which that instrument has committed to it.

Also in *Henderson* v. *Mayor*, 92 U. S. 259, 271, in delimiting the police power of the State, the court said:

> * * * no definition of it, and no urgency for its use, can authorize a State to exercise it in regard to a subject-matter which has been confided exclusively to the discretion of Congress by the Constitution.

And again at page 272:

> But, however difficult this may be, it is clear, from the nature of our complex form of government, that, whenever the statute of a State invades the domain of legislation which

> belongs exclusively to the Congress of the United States, it is void, no matter under what class of powers it may fall, r how closely allied to powers conceded to belong to the States.

See also *Weston* v. *Charleston*, 2 Pet. 448, 467.

In *Society for Saving* v. *Coite*, 6 Wall. 594, 604, the court thus spoke:

> Congress has power to borrow money on the credit of the United States, and the people, by making the government supreme, have shielded its action in the exercise of that power from every species of unfriendly State legislation.

Particularly pertinent is the following excerpt from *Osborn* v. *Bank*, 9 Wheat. 738, 867:

> Can a contractor for supplying a military post with provisions be restrained from making purchases within any State, or from transporting the provisions to the place at which the troops were stationed? or could he be fined or taxed for doing so? We have not yet heard these questions answered in the affirmative. It is true that the property of the contractor may be taxed, as the property of other citizens; and so may the local property of the bank. But we do not admit that the act of purchasing, or of conveying the articles purchased, can be under State control.

2. Decisions of this and other courts demonstrating that the "supremacy" test has been employed not only to restrain State taxation of Federal operations and instrumentalities, but also to prevent any exercise of State power or control in such Federal domain.

If the taxing power of the State may not be exerted over Federal operations and instrumentalities because of the "supremacy" of the Federal Government in the field of its constitutional authority, then obviously and for the same reason is the State forbidden to exert any regulative control. As the question of reasonableness or unreasonableness is no factor in restraining the State taxing power in the Federal domain, so too it can be no factor in restraining attempted State regulation or control in the same field. A few typical cases will illustrate the point.

In *Ohio* v. *Thomas*, 173 U. S. 276, 283, the facts disclose that Thomas, who was governor of a Federal soldiers' home in Ohio, in which home oleomargarine was served as an article of food, failed to comply with the State law which required the posting of cards in such cases. He was tried, convicted, sentenced, and thereupon sued out a writ of habeas corpus. The court ordered his release, and upon appeal to the Supreme Court of the United States, that court said, in upholding the judgment of release:

> Whatever jurisdiction the State may have over the place or ground where the institution is located, it can have none to interfere with the provision made by Congress for furnishing food to the inmates of the home, nor has it power to prohibit or regulate the furnishing of

any article of food which is approved by the officers of the home, by the board of managers, and by Congress. Under such circumstances the police power of the State has no application.

We mean by this statement to say that Federal officers who are discharging their duties in a State and who are engaged as this appellee was engaged in superintending the internal government and management of a Federal institution, under the lawful direction of its board of managers and with the approval of Congress, are not subject to the jurisdiction of the State in regard to those very matters of administration which are thus approved by Federal authority.

* * * * *

Under the facts herein the State court had no jurisdiction to try the appellee for the offence charged in the written complaint made to the magistrate. See authorities cited in *In re Waite*, 81 Fed. Rep. 359.

Assuming, in accordance with the decision of the State court, that the act of the Ohio Legislature applies in terms to the soldiers' home at Dayton, in that State, we are of opinion that the governor was not subject to that law and the court had no jurisdiction to hear or determine the criminal prosecution in question, because the act complained of was performed as part of the duty of the governor as a Federal officer in and by virtue of valid Federal authority, and in the performance of that duty he was not subject to the direction or control of the Legislature of Ohio.

> The authorities cited in the case of *In re Waite, supra*, and those cited by the learned circuit judge in this case fully support the view we have taken herein. The cases of *Tennessee* v. *Davis*, 100 U. S. 257; *Ex parte Siebold*, 100 U. S. 371, 394, 395; *In re Loney*, 134 U. S. 372; *In re Neagle*, 135 U. S. 1, all concur in upholding the paramount authority of the Federal Government under circumstances similar, in effect, to those set forth in this record.

It could scarcely be urged that the simple task of posting card notices that oleomargarine was served in the soldiers' home unreasonably regulated or interfered with the management of the home, and yet this court found no difficulty in reaching the conclusion that the State was utterly without jurisdiction over the subject matter.

In *Flaherty* v. *Harrison*, 215 U. S. 515, this court held that a person who had obtained a Federal liquor dealer's tax receipt could not be required to register it pursuant to State law to the end that the State authorities might have the benefit of that information in the enforcement of the local statute against "unlawful traffic in intoxicating liquors."

In the case of *In re Neagle*, 135 U. S. 1, this court held that a deputy marshal who shot and killed a man whom he believed was about to commit bodily harm upon a justice of this court could not be made to respond to the State laws defining and punishing murder and manslaughter.

The case is important upon the issue in the case at bar, in that this court upheld Neagle's judgment as to the manner in which his duty should be discharged, although that judgment did not correspond to the judgment of the State authorities as demonstrated by their act in arresting Neagle upon the charge of murder. Moreover, the judgment of the Attorney General in his selection of and instructions to Neagle were likewise upheld.

In the case at bar the Postmaster General, acting pursuant to law, has appointed plaintiff in error to operate a Government-owned motor vehicle in the transportation of the mails. By that act the Postmaster General expressed his satisfaction with the qualifications of the appointee. The State of Maryland does not allege that the Postmaster General has not made a proper appointment, nor is it asserted that plaintiff in error does not possess the necessary qualifications, but the State insists upon the right to have its officers determine his qualifications, and to have their judgment prevail, which judgment might well turn out to be contrary to that of the Postmaster General, and to thereby require the dropping of the motor operator from the postal service. Is the judgment of the Postmaster General less secure from State interference than the judgment of Neagle, supra?

Moreover, as the State could not undertake to delimit the official conduct of Neagle, so Maryland may not assert the right to determine whether plaintiff in error is a proper person to operate a Govern-

ment-owned motor vehicle in transporting the mails over the post roads of the State, yet that is the fundamental and sole purpose of requiring application for license, and demonstration of fitness as a condition precedent to the issuance of such license.

In *Pembina Mining Company* v. *Pennsylvania*, 125 U. S. 181, 186, this court recognized that a corporation employed by the United States to construct a ship or a man-of-war would have the right to purchase the necessary timber and iron in any State of the Union without the permission of the State and even against the prohibition of the State.

In re Waite, 81 Fed. 359, involved the performance of official duty by a pension employee. The employee exercised his own judgment as to the manner in which that duty should be performed. In what he did he violated a law of the State, so the State authorities claimed. He was indicted, tried, and convicted. Upon habeas corpus, however, the Federal court released him, holding, in effect, that the State could not supervise nor delimit the performance of his official duty.

Finally, as stated by this court in *Farmers Bank* v. *Minnesota*, 232 U. S. 516, 526, quoting from *M'Culloch* v. *Maryland*, 4 Wheat. 316, in speaking of the right of a State to tax a Federal contract, "to any extent however inconsiderable, it is a burthen on the operation of Government." Thus this court has made it plain that it is not the extent but the mere fact of attempted State control of Federal operations that is constitutionally objectionable.

That this court may have them readily available, the following cases involving conflict between Federal and State power, are here listed:

Boske v. *Comingore*, 177 U. S. 459, 468–470.
Williams v. *Talladega*, 226 U. S. 404.
United States v. *Ansonia Co.* 218 U. S. 452, 471.
Holmes v. *Jennison*, 14 Pet. 540, 574, 575, 577.
In re Loney, 134 U. S. 372, 375.
Western Union Tel. Co. v. *Brown*, 234 U. S. 542, 547.
In re Lewis, 83 Fed. 159.
Castle v. *Lewis*, 254 Fed. 917, 920, 921.
United States v. *Fuellhart*, 106 Fed. 911.
United States v. *Lipsett*, 156 Fed. 65.
Pundt v. *Pendleton*, 167 Fed. 997.
In re Thomas, 87 Fed. 453.
Stegall v. *Thurman*, 175 Fed. 813.
In re Wulzen, 235 Fed. 362.
Exparte Beach, 259 Fed. 956.

II.

If State possesses power to determine qualifications of plaintiff in error, then it likewise possesses power to levy a tax upon him for revenue or other purposes.

There seems to be no escape from the conclusion that if Maryland possesses the power to determine the qualifications of plaintiff in error to officially operate a Government-owned motor vehicle in the transportation of the mails, such power necessarily arises out of the State's jurisdiction over him as an employee of the United States, and if he is thus brought within

such jurisdiction, then he by virtue of that fact is embraced within the taxing power of the State; and although he only travels in and out of the State in pursuance of his official duty, he may be made to contribute to the funds of the State through the exercise of the State's power of taxation.

As early as *M'Culloch* v. *Maryland*, 4 Wheat, 316, 429, this court said:

> It may be objected to this definition, that the power of taxation is not confined to the people and property of a State. It may be exercised upon every object brought within its jurisdiction.
>
> This is true. But to what source do we trace this right? It is obvious, that it is an incident of sovereignty, and is coextensive with that to which it is an incident. All subjects over which the sovereign power of a State extends, are objects of taxation; but those over which it does not extend, are, upon the soundest principles, exempt from taxation. This proposition may almost be pronounced self-evident.

In *Shaffer* v. *Carter* et al, 252 U.S. 37, 50, this court said:

> In our system of government the States have general dominion, and, saving as restricted by particular provisions of the Federal Constitution, complete dominion over all persons, property, and business transactions within their borders; they assume and perform the duty of preserving and protecting all such persons, property, and business, and, in consequence, have the power normally pertaining

> to governments to resort to all reasonable forms of taxation in order to defray the governmental expenses. Certainly they are not restricted to property taxation, nor to any particular form of excises.

To the same effect are *Mugler* v. *Kansas*, 123 U. S. 623, 659; and In re Rahrer, 140 U. S. 545, 554, in which latter case this court said:

> The power of the State to impose restraints and burdens upon persons and property in conservation and promotion of the public health, good order, and prosperity, is a power originally and always belonging to the States, not surrendered by them to the General Government nor directly restrained by the Constitution of the United States, and essentially exclusive.

Is it not thus made plain that the power of taxation is coextensive with sovereignty, and as the police power can not be more extensive than sovereignty, the police and taxation powers must be coequal. From this it necessarily follows that the absence of power to levy a tax upon a Federal employee or agency as such equally forbids the exercise of the police power to control the official operations of such employee or agency. *Dobbins* v. *Erie County*, 16 Pet. 435, 447–448. *Transportation Company* v. *Wheeling*, 99 U. S. 273, 279, 283. The denial of the State right to tax Federal employees or agents rests, as hereinbefore pointed out, upon the "supremacy" of the Federal Government in discharging its constitutional functions. That same principle forbids

State regulative control over such Federal employee or agent.

III.

Maryland statute open to objection that it seeks to determine the fitness of, with reserved power to deny, a means adopted by Congress in executing its constitutional power to establish post offices and post roads.

It has been firmly established that the choice by Congress of means for executing Federal constitutional powers is not restricted to those which may be shown to be necessary, but that Congress may select any proper means.

To quote again from *M'Culloch* v. *Maryland*, *supra*, pages 413 and 414:

> But the argument on which most reliance is placed is drawn from the peculiar language of this clause. Congress is not empowered by it to make all laws, which may have relation to the powers conferred on the Government, but such only as may be "*necessary and proper*," for carrying them into execution. The word "*necessary*" is considered as controlling the whole sentence, and as limiting the right to pass laws for the execution of the granted powers, to such as are indispensable, and without which the power would be nugatory. That it excludes the choice of means, and leaves to Congress, in each case, that only which is most direct and simple.
>
> * * * * *
>
> To employ the means necessary to an end is generally understood as employing any

> means calculated to produce the end and not as being confined to those single means without which the end would be entirely unattainable.

See also *Fairbank* v. *United States*, 181 U. S. 283, 287, 288.

In the case at bar the Postmaster General, acting under authority of Congress, has chosen plaintiff in error as an appropriate means of securing the motor transportation of mails over the post roads of Maryland. The State of Maryland, however, in its statute here drawn in issue, asserts the right to determine the necessity and propriety of the selection. To state it more concretely, the State, by its legislation, virtually fixes the class from which the Postmaster General may select the human instrumentalities.

IV.

State ownership of roads confers no power to create conditions and terms upon which Federal Government may use them in discharge of its Constitutional functions.

While the State possesses the right to make a charge for the road facilities which it furnishes, its power to regulate and control the use of such roads can not, by virtue of its ownership of such roads, be more extensive than its police power, for such latter power is as broad as its sovereignty. This was made clear in *Hendrick* v. *Maryland*, 235 U. S. 610, which involved the validity of certain provisions of the earlier automobile law of Maryland. The court said (p. 622):

> In the absence of national legislation covering the subject a State may rightfully prescribe uniform regulations necessary for public safety and order in respect to the operation upon its highways of all motor vehicles—those moving in interstate commerce as well as others. And to this end it may require the registration of such vehicles and the licensing of their drivers, charging therefor reasonable fees graduated according to the horsepower of the engines—a practical measure of size, speed, and difficulty of control. This is but an exercise of the police power uniformly recognized as belonging to the States and essential to the preservation of the health, safety, and comfort of their citizens; and it does not constitute a direct and material burden on interstate commerce. The reasonableness of the State's action is always subject to inquiry in so far as it affects interstate commerce, and in that regard it is likewise subordinate to the will of Congress. (*Barbier* v. *Connolly*, 113 U. S. 27, 30, 31; *Smith* v. *Alabama*, 124 U. S. 465, 480; *Lawton* v. *Steele*, 152 U. S. 133, 136; *N. Y., N. H. & H. R. R.* v. *New York*, 165 U. S. 628, 631; *Holden* v. *Hardy*, 169 U. S. 366, 392; *Lake Shore & Michigan Southern Railway* v. *Ohio*, 173 U. S. 285, 298; *Chicago, B. & Q. R. R.* v. *McGuire*, 219 U. S. 549, 568; *Atlantic Coast Line* v. *Georgia*, 234 U. S. 280, 291.)

The above view was affirmed in *Kane* v. *New Jersey*, 242 U. S. 160, 168.

It follows that if the State's ownership of its roads does not deprive Congress of the power to supplant

State regulative laws with respect to the use of those roads as instruments of interstate commerce, then upon the same principle the State power must be subordinate to the exercise of any other constitutional power. As said in *In re Rahrer*, 140 U. S. 545, 555, 556, in speaking of the paramount will of Congress:

> And if a law passed by a State in the exercise of its acknowledged powers comes into conflict with that will, the Congress and the State can not occupy the position of equal opposing sovereignties, because the Constitution declares its supremacy and that of the laws passed in pursuance thereof. (*Gibbons* v. *Ogden*, 9 Wheat. 1, 210.) That which is not supreme must yield to that which is supreme. (*Brown* v. *Maryland*, 12 Wheat. 419, 448.)

The above principle was reaffirmed in *Second Employers' Liability Cases*, 223 U. S. 1, 54.

Were the rule otherwise the constitutional power to establish post offices and post roads, which of course embraces provisions for the transportation of the mails, would, to a considerable degree, depend for its efficient exercise upon the will of the State; for while its highways are post roads (*Western Union Telegraph Co.* v. *Richmond*, 224 U. S. 160, 165; *Essex* v. *New England Tel. Co.*, 239 U. S. 313,321), nevertheless the State could dictate the terms upon which the mails could be transported over them. The Federal constitutional power recognizes no such dependence.

V.

Plaintiff in error possessed the right secured to him by the Constitution and laws of the United States to engage in the employment here drawn in issue without compliance with the laws of Maryland.

The invalidity of the Maryland motor vehicle law here involved may be further demonstrated by a brief consideration of the right of plaintiff in error to enter the employ of the Federal postal service in the capacity of motor operator. As applied to the facts of this case, the Maryland law, as interpreted by the court below, requires that as a condition precedent to accepting Federal employment in the capacity of motor operator over the highways of the State he shall first demonstrate to the satisfaction of the State officers that he possesses the qualifications to safely operate such a vehicle. If the State officers are dissatisfied with his qualifications, they refuse him a license, and in substance thereby inform him that he may not accept the Federal position he seeks.

This court declared in the *Slaughter House Cases*, 16 Wall. 36, 79, that among the nationally secured rights which no State can abridge is the right to share the offices and engage in administering the functions of the United States. Is the right subject to the condition that if the Federal office or the Federal function requires the official presence of the citizen within the borders of a State, which so frequently happens, the citizen may not officially function until the State has approved his qualifications? If so, then the right is not completely secured by the Constitution, as

heretofore supposed, but its security, in the last analysis, rests upon the will and approval of the State.

Consider another illustration: In *Hawker* v. *New York*, 170 U. S. 189, this court recognized the right of a State to require, as a condition precedent to the practice of medicine, a demonstration of the qualifications of the applicant. Will it be contended that a physician may not enter, e. g., the service of the Federal Army as a physician on duty within the boundaries of a State until he has first met the requirements of the State law? Yet that would seem to be the conclusion to which the decision below in the case at bar logically leads.

VI.

Principles upholding exertions of State power affecting interstate commerce, not applicable to case at bar.

When the distinction between the constitutional power conferred upon Congress to regulate commerce among the States and the power to establish post offices and post roads is correctly understood, it will become at once manifest that the judicial decisions upholding State exertions of police power affecting interstate commerce can not possibly be used as authority for the assertion that the State may exert a like power with respect to the establishment of post offices and post roads.

It is to be carefully observed that the power to regulate commerce among the States is the power to regulate something that is existent, viz, commerce,

and furthermore that commerce is carried on by persons and corporations that represent the ordinary subjects of State police power because they carry on business within the States and owe a duty to the State. It may turn out, however, that the carrier is also engaged in interstate commerce, and that the State exertion of power within its local field may have a sensible effect upon that commerce. In that situation there being a field and a subject for State action, the only question that can arise is whether the State action is pushed to the point where it operates as an unreasonable burden upon interstate commerce. Stated somewhat differently, the question is whether the State action directly or only incidentally affects that commerce. This is the true theory upon which the courts have determined the various cases that have arisen for decision, as we shall now show.

In elucidating the controlling principle in *Nashville Railway* v. *Alabama*, 128 U. S. 96, 100, 101, the court said:

> Indeed, it is a principle fully recognized by decisions of State and Federal courts that wherever there is any business in which, either from the products created or the instrumentalities used, there is danger to life or property, it is not only within the power of the States, but it is among their plain duties, to make provision against accidents likely to follow in such business, so that the dangers attending it may be guarded against so far as is practicable.
>
> * * * * *

> And the court in that case held that the provisions in the statute of Alabama were not strictly regulations of interstate commerce but parts of that body of the local law which governs the relation between carriers of passengers and merchandise and the public who employ them, which are not displaced until they come in conflict with an express enactment of Congress in the exercise of its power over commerce, and that until so displaced they remain as the law governing carriers in the discharge of their obligations, whether engaged in purely internal commerce of the State or in commerce among the States. The same observations may be made with respect to the provisions of the State law for the examination of parties to be employed on railways with respect to their powers of vision. Such legislation is not directed against commerce, and only affects it incidentally, and therefore can not be called, within the meaning of the Constitution, a regulation of commerce. As said in *Sherlock* v. *Alling*, 93 U. S. 99, 104, legislation by a State of that character, "relating to the rights, duties, and liabilities of citizens, and only indirectly and remotely affecting the operations of commerce, is of obligatory force upon citizens within its territorial jurisdiction, whether on land or water, or engaged in commerce, foreign or interstate, or in any other pursuit."

In the *Minnesota Rate Cases*, 230 U. S. 352, 402, 403, 410, 411, the court said:

> Where the subject is peculiarly one of local concern, and from its nature belongs to the

class with which the State appropriately deals in making reasonable provision for local needs, it cannot be regarded as left to the unrestrained will of individuals because Congress has not acted, although it may have such a relation to interstate commerce as to be within the reach of the Federal power.

* * * * *

And the legislation of the States, safeguarding life and property and promoting comfort and convenience within its jurisdiction, may extend incidentally to the operations of the carrier in the conduct of interstate business, provided it does not subject that business to unreasonable demands and is not opposed to Federal legislation.

* * * * *

When, however, the State in dealing with its internal commerce undertakes to regulate instrumentalities which are also used in interstate commerce, its action is necessarily subject to the exercise by Congress of its authority to control such instrumentalities so far as may be necessary for the purpose of enabling it to discharge its constitutional function. (*Southern Railway Co.* v. *United States, supra; Baltimore & Ohio Railroad Co.* v. *Interstate Commerce Commission, supra.*)

In *Lake Shore & Michigan So. Ry.* v. *Ohio*, 173 U. S. 285, 297, it was said:

Mr. Cooley well said: "It cannot be doubted that there is ample power in the legislative department of the State to adopt all necessary legislation for the purpose of enforcing the obligations of railway companies as carriers of

> persons and goods to accommodate the public impartially, and to make every reasonable provision for carrying with safety and expedition." (Cooley's Const. Lim. (6th ed.), p. 715.) It may be that such legislation is not within the "police power" of a State, as those words have been sometimes, although inaccurately, used. But in our opinion the power, whether called police, governmental, or legislative, exists in each State, by appropriate enactments not forbidden by its own constitution or by the Constitution of the United States, to regulate the relative rights and duties of all persons and corporations within its jurisdiction, and therefore to provide for the public convenience and the public good.

We thus have a carrier, its employees, and its business, all subject in certain respects to State control and regulation. Let the carrier, in addition to its regular business, commerce, undertake to perform some service for the Federal Government. That fact alone obviously could not *ipso facto* withdraw the carrier from the State control theretofore exerted over it. In such case, involving merely the mixing of Government business with its private business, the simple question would be whether the State legislation operating within its permissible field unduly hampered the carrier in the performance of its additional service for the Government. But if the carrier withdraw from its private business, and should be employed solely by the Government on Federal business, would there not thereby be presented a case where any attempted State control would be "direct"

and not "incidental," for the previous private business of the carrier, a proper subject of State exertion, would be no longer existent, and there would remain only the Federal business, which the State may not constitutionally control or regulate?

The point may be further illustrated by considering some of the numerous exertions of State power affecting interstate commerce which have been upheld. For example, the States have been permitted to (1) fix liability for loss of property on interstate as well as intrastate shipments; (2) create and enforce liens upon interstate vessels for supplies furnished under contract; (3) provide for attachment for debt of cars employed in interstate commerce (*The Minnesota Rate Cases*, 230 U. S. 409, 410); (4) require locomotive engineers to be examined and licensed (*Smith* v. *Alabama*, 124 U. S. 465); (5) regulate the heating of passenger cars (*N. Y., N. H. & H. Rd.* v. *New York*, 165 U. S. 628); (6) prescribe the minimum number of brakemen on freight trains (*Chicago, R. I. & P. R. Co.* v. *Arkansas*, 219 U. S. 453); (7) forbid the running of freight trains on Sunday (*Hennington* v. *Georgia*, 163 U. S. 299); (8) prescribe electric headlights for locomotives (*Atlantic Coast Line* v. *Georgia*, 234 U. S. 280).

These various instances of valid State exertions affecting interstate commerce are of such character that the very statement of them immediately suggests their total inapplicability to, for example, a Government-owned railroad employed in transporting troops, supplies, or the mails. See *Northern*

Pacific Ry. Co. v. *North Dakota*, 250 U. S. 135, 148; *Dakota Cent. Tel. Co.* v. *South Dakota*, idem, 163, 187.

Now coming to consider the constitutional power to establish post office and post roads, which, as we have heretofore pointed out, embraces regulation of the entire Postal System, that power, like the power to coin money, or declare war, is a creative power. Until Congress acts there is nothing existent upon which State authority can fasten. When Congress acts there is still no field for State action, for obviously there is no field save that which Congress has created and which it necessarily exclusively occupies. When Congress authorizes the Postmaster General to "superintend generally the business of the department, and execute all laws relative to the Postal Service," including the instruction of "all persons in the Postal Service with reference to their duties," is it conceivable that the States may, through local legislation like that involved in the case at bar, assert the right to pass upon the qualifications of those particular postal employees whose duties require them to operate Government-owned motor vehicles in the transportation of the mails? Such a power in the States would be a restriction upon the superintending power of the Postmaster General.

The true theory must be that where Congress legislates as it has done with respect to the powers of the Postmaster General, it remains for that official, without interference by the States, to perform his task in the manner which his judgment dictates.

This may be readily demonstrated. In *In re Neagle*, *supra*, the Federal law authorized Neagle to protect the judge, but Neagle must and did exercise his discretion as to whether the performance of his task required him to take the life of another. This court denied the right of the State to set up its judgment against that of Neagle. In *In re Waite*, *supra*, Waite was merely authorized to investigate pension frauds, but Waite exercised his own judgment as to the particular manner of conducting the investigation; and while the State law made an offense out of what Waite officially did, the Federal court found no difficulty in holding that Waite was not amenable to the State law. So in the case at bar, if the Federal statutes upon the subject were less clear, it still must be held to be within the power of the Postmaster General to determine the character and fitness of the human agents he appoints to transport the mails by means of Government-owned motor vehicles.

See *Lewis Pub. Co.* v. *Morgan*, 229 U. S. 288, 301, and *Central Trust Co.* v. *Central Trust Co.*, 216 U. S. 251, 259, in which latter case this court said that "the management of the great post-office business is placed in the hands of the Postmaster General and assistants."

VII.

Analysis of State cases bearing upon questions here involved.

In the case of *Rhode Island* v. *Burton*, 103 Atl. 962, the Supreme Court of that State answered in

the negative the following question certified to it by the trial court:

> 1. Is a machinist mate, second class, regularly enlisted in the United States Naval Reserve Force, while on duty as a despatch driver, and acting under the specific instructions of his superior officer to proceed with all possible despatch, and assumed by the officer to necessitate the violation of the speed laws, and which instructions he was obliged to obey, in a matter by said officer deemed to be of urgency and in a matter appertaining to the conduct of the war between the United States and Germany, amenable to the laws of the State of Rhode Island for violating the speed laws under the provisions of chapter 298, section 5, of the General Laws?

In *ex parte Marshall*, 77 So. 869, the Supreme Court of Florida held, inferentially, that Government owned and operated motor vehicles were not subject to local license law. Particular attention is invited to the dissenting opinion in this case.

In *Commonwealth* v. *Closson*, 229 Mass. 329, the Supreme Court of Massachusetts held the local ordinances regulating the use of the streets and highways applied to mail motor operators. The court appeared to be of the view that ownership of the streets and highways carried with it State power to control the use of them by Federal employees in the discharge of their official duties. If, as endeavored to be hereinbefore pointed out, ownership of highways can add nothing to the scope of the State's police power, then the instant case can

not be held to correctly state the law. The Federal cases upon which the court partially relies can scarcely be said to support its conclusion. Moreover, the decision appears to be out of harmony with such cases as *Ohio* v. *Thomas, supra; In re Neagle, supra; Hendrick* v. *Maryland, supra;* and *Kane* v. *New Jersey, supra.*

In *State* v. *Gorham,* 188 Pac. 457, the Supreme Court of Washington recognized the immunity of a deputy sheriff while in the performance of his official duty from the local speed regulations.

VIII.

Opinions of the Attorney General upon which court below partially relies.

The court does not give the citations to the two opinions of the Attorney General which it states are in harmony with its rulings, but it is assumed that the first opinion is that published in volume 28, Op. A. G. 604, recognizing the right of a State to require compliance with reasonable regulations before entering upon occupations such as motor-vehicle operator, and holding that employment by Government does not exempt from such requirement. The opinion demands no separate comment in view of the principles hereinbefore outlined for testing the power of the State as exerted in the case at bar, although it is significant that the opinion holds unconstitutional both the operator's license fee and the vehicle registration fee as being taxes upon a Federal instrumentality. However, see 25 Op. A. G. 234.

In the second opinion, which is unreported, it was merely held that the fees must be paid. It was believed such conclusion was justified by those portions of *Hendrick* v. *Maryland, supra*, and *Kane* v. *New Jersey, supra*, which recognized the right of the State to make a charge for facilities furnished. The opinion did not deal with nor recognize, however, the right of the State to exact a condition precedent to the payment of the fees and the acquirement of the right to use the State roads. Moreover, the non-publication of the opinion was due to the subsequently formed conclusion that the question was of such wide-reaching importance that its authoritative determination should be judicially sought. Consequently certain United States attorneys interested were instructed to defend any cases arising in their districts in which the State sought to exact operator or machine license fees.

IX.

It is respectfully submitted that the judgment below should be reversed.

ROBERT P. STEWART,
Assistant Attorney General.
HARRY S. RIDGELY,
Attorney.

Supreme Court of the United States

OCTOBER TERM, 1920.

No. 289.

WILLIAM E. JOHNSON,

PLAINTIFF IN ERROR,

against

THE STATE OF MARYLAND,

DEFENDANT IN ERROR.

BRIEF FOR DEFENDANT IN ERROR.

STATEMENT.

Chapter 85 of the Acts of Assembly of Maryland of the year 1918 (amending Section 143 of Article 56 of the Code of Public General Laws) provides in part, as follows:

> "No person shall operate a motor vehicle upon any highway of this State until he first shall have obtained a license for the purpose. The Commissioner shall require an actual demonstration of the qualifications of the person applying for such license, and, in addition, may refuse to issue the same if, in his judgment, the safety of the public would be jeopardized thereby, but said applicant shall have the right to appeal if license is refused, as provided elsewhere in this sub-title." The total amount of fees required of the applicant for such license is Three Dollars ($3.00).

The plaintiff in error in this case was the driver of a motor truck used and operated upon the public highways of Frederick County, Maryland, for the transportation of United States Mail. He had not procured the license required by the statute to which reference has been made. A warrant for his arrest was issued, upon information and oath, by a justice of the peace of the State of Maryland, in and for Frederick County, upon the charge of operating a motor vehicle without the required license, and he was arrested, tried and convicted and was sentenced to pay a fine of Ten Dollars ($10.00) and costs. From this judgment and sentence he appealed to the Circuit Court for Frederick County. Upon application of the State's Attorney, the warrant was amended over the objection of the United States District Attorney, who, after the granting of the amendment, noted an exception to the ruling of the Court.

The United States District Attorney, on behalf of the plaintiff in error, then moved to quash the information and warrant. (The petition for writ of error alleges that this motion was overruled.) The United States Attorney then filed seven special pleas, together with the general plea of not guilty, and the State's Attorney for Frederick County demurred to all the special pleas, which demurrer was sustained by the Court.

It was then stipulated in open Court at the trial of the cause that the amendment to the original warrant was properly made, and certain facts were, by stipulation, admitted as the facts in the case, no other testimony being offered on either side. Upon this stipulation, the plaintiff in error was, under the plea of not guilty, tried de novo, as provided by the Maryland statute with respect to appeals from justices of the peace, and was found guilty. Motion in arrest of judgment having been overruled, the plaintiff in error was sentenced to pay a fine

of Ten Dollars ($10.00) and costs, from which judgment and sentence he prayed the allowance of a writ of error to the Supreme Court of the United States, the Circuit Court for Frederick County being the highest Court of the State of Maryland in which an appeal or writ of error would lie, no appeal being allowed under the laws of Maryland from a judgment of that Court, rendered upon appeal from a justice of the peace.

The motion to quash, the pleas, and the motion in arrest of judgment are substantially set forth in the petition for writ of error.

The plaintiff in error assigns as grounds of error that the Court erred (1) in overruling the motion to quash, (2) in sustaining the State's demurrer to the special pleas, (3) in overruling the motion in arrest of judgment. The 4th, 5th, 6th, 7th and 8th grounds of error assigned are that the Court erred in affirming the sentence of the justice of the peace for the same reason substantially alleged in the motion to quash, in the special pleas and in the motion in arrest of judgment. The question raised by the grounds of error assigned may be broadly stated thus: Is the Maryland statute, forbidding any person to operate a motor vehicle upon any highway of the State without first obtaining a license for that purpose, requiring certain qualifications of the applicant for such license, exacting a license fee of Three Dollars ($3.00), and imposing a penalty for a violation of that provision, applicable to an agent and employee of the United States operating an automobile owned by the United States for the carriage of United States mail matter upon the highways of the State of Maryland; or is that statute inapplicable to such a person by reason of the fact that he is engaged, as an agent and employee of the United States, in operating upon such highways an automobile so owned for such purpose?

The plaintiff in error contends that the Court erred in convicting him for a violation of the statute upon the facts of this case, because the State of Maryland cannot constitutionally regulate the qualifications of officers and agents of the United States as a condition precedent to the exercise of the discharge of their official duties and cannot constitutionally impose a tax upon such officers and agents as a condition precedent to the performance of such duties.

ARGUMENT.

1.

When a State, by a law of general application, forbids any person to operate an automobile upon its highways, without first obtaining a license so to do, and requires certain qualifications of the applicant for such license as a condition precedent to the issuance thereof, an employee of the United States, who operates such automobile only in the course of his employment, can constitutionally be required to comply with such provisions.

The regulation in question is enacted in pursuance of the police power and its object is to protect the life and property of persons using the highways of the State by preventing the operation of automobiles by incompetent persons. In order to accomplish this object, it provides for the examination of all persons before they shall be permitted to operate automobiles upon such highways.

A person employed by the United States to perform the service authorized by its laws and in connection with its property is subject to State control as to the method by which he shall perform such service in a State. If he is guilty of wilful misconduct or negligence, while performing such duty, he is liable in damages, for the laws of the United States do not authorize him to perform his duties

in a negligent manner, and he is liable for all damages that may result from an unauthorized act. This proposition is supported by the opinion of Chief Justice Marshall in the case of Little vs. Barreme, 2 Cranch, 170, and by that of Chief Justice Taney in Mitchell vs. Harmony, 13 Howard, 115.

Such an employee is also liable to criminal prosecution for performing such duties in such a manner as to violate the laws of a State. In the case of Commonwealth of Massachusetts vs. Closson, L. R. A. 1918C, 939, the accused rested his defense upon the ground that, being employed as a mail carrier using a vehicle for the delivery of mail, he was immune from prosecution from so operating that vehicle as to violate certain traffic rules and regulations. The Supreme Judicial Court of Massachusetts decided that this defense could not avail him, and that he was liable to prosecution for his acts committed on the public highways of the State, which, although post roads under acts of Congress, remained "public ways laid out and maintained by the Commonwealth, which has the exclusive power not only of alteration and of discontinuance, but to make and enforce reasonable regulations for their use." It would seem to follow that, if a State may insure against the improper use upon its highways of a vehicle of the United States Government, by a prosecution of the person improperly using it thereon, it may accomplish the same object by requiring proof of the competence of such person to use such vehicle properly upon those highways as condition precedent to his being permitted to operate it thereon.

The defendant in error adopts on this point the reasoning of Attorney-General Wickersham, 28 Opinions of the Attorney-General 604. The Attorney-General was there passing upon the very question here discussed, and ruled

that, "when a State had deemed it advisable, in order to protect the public against dangers that might arise from performing the duties of a lawful employment in an unlawful manner, to adopt reasonable regulations which require that certain conditions be complied with before entering upon such occupation, one cannot excuse himself from complying therewith on the ground that he is employed by the United States Government." The Attorney-General then gave the following illustration: "Suppose the United States should undertake to construct a public building in the City of Baltimore, and in excavating for the foundation it should become necessary to use large quantities of dynamite in the blasting. Could it be insisted with any reason that the employees of the Government engaged in such work could not be required to keep this dynamite stored, and to handle the same and do the blasting in accordance with the municipal or State regulations controlling such work? And if, in order to guard against accidental explosions, the local regulations should require that the foreman who had the supervision of work of that character should satisfy the authorities that he possessed proper knowledge and skill, and that he should obtain a license showing that fact, such a regulation would clearly be valid and enforceable against him who should undertake to supervise the work for the Government."

2.

The State can constitutionally exact the payment of a license fee such as is required by the law under discussion, whether such fee is considered as a reasonable fee for the services of the State officials charged with the issuance of license or as compensation exacted by the State for the use of its road facilities.

Attorney-General Wickersham, in the opinion to which reference has been made, upheld this license fee upon the

first of these grounds, saying: "Undoubtedly, the State officials who are invested with the issuance of licenses cannot be required to do their prescribed work without compensation, and I think a reasonable fee for their services could be exacted for issuing the licenses, both to the chauffeur and for operating the automobiles."

In this opinion, the Attorney-General denied the right of the State to exact any fee for the licensing of automobiles owned by the Government other than the fee referred to in the above quotation. Afterwards, however, this Court decided the case of Hendrick vs. Maryland, 235 U. S. 610, in which the right of the State to exact a fee for the licensing of automobiles used in interstate commerce was upheld on the ground that one of the purposes of the act exacting such license fees was "to secure some compensation for the use of facilities provided at great cost from the class for whose needs they are essential and whose operations over them are peculiarly injurious."

After the decision in Hendrick vs. Maryland, Attorney-General Gregory, in passing on the very question presented in the instant case, overruled, upon the authority of Hendrick vs. Maryland, that portion of the opinion of Attorney-General Wickersham last above cited. Attorney-General Gregory also referred to the opinion of Chief Justice Taney in Searight vs. Stokes, 3 Howard, 151. In the case last cited, the State of Pennsylvania, on acquiring from the United States a portion of a road built by the Government, agreed that no toll should be charged to vehicles engaged in transporting the mail. The Court said (p. 170): "If the State had made this road herself, and had not entered into any compact upon the subject with the United States, she might undoubtedly have erected tollgates thereon; and if the United States afterwards adopted it as a post road, the carriages engaged in their service in transporting the mail, or other-

wise, would have been liable to pay the same charges that were imposed by the State on other vehicles of the same kind." (See also Dickey vs. Maysville, &c., Road Co., 7 Dana 113.)

Attorney-General Gregory concluded that the view of Attorney-General Wickersham, that no license fee could be exacted by the State of Maryland for the operation of automobiles over its highways except as compensation to the officials of the State for their services in issuing licenses, could no longer be maintained, in view of the decision in Hendrick vs. Maryland, and upheld the constitutionality of the license fee involved in the instant case as a fee exacted with a view to "secure some compensation for the use of facilities provided at great cost."

In our view, the fee here in question is for services rendered by State officials in connection with the issuance of the license, which was the ground upon which the validity of such fees was upheld by Attorney-General Wickersham, but the above citation shows that Attorney-General Gregory also upheld the validity of such fees, although on a different ground.

We, therefore, submit that the judgment of the Circuit Court for Frederick County, State of Maryland, should be affirmed.

ALEXANDER ARMSTRONG,

Attorney-General of Maryland,

LINDSAY C. SPENCER,

Assistant Attorney-General of Maryland,

For Defendant in Error.

Supreme Court of the United States

OCTOBER TERM, 1920.

No. 289.

WILLIAM E. JOHNSON,

PLAINTIFF IN ERROR,

against

THE STATE OF MARYLAND,

DEFENDANT IN ERROR.

LIST OF AUTHORITIES SUBMITTED FOR DEFENDANT IN ERROR.

Opinions of Attorney-General of Wisconsin (Owens), Vol. 2, 1913, p. 36.

U. S. vs. Kirby, 74 U. S. (7 Wallace 482).

Opinion of Attorney-General Crittendon, 5 Opinions of Attorney-General, 554.

U. S. vs. Hart, 1 Peters Cir. Ct. Repts. 390-2.

Searight vs. Stokes, 3 Howard 151, page 170

Dickey vs. Maysville, etc., Road Co., 7 Dana. 113.

Hendrick vs. Md., 235 U. S. 610.

Kane vs. New Jersey, 242 U. S. 160.

Babbitt, The law applied to Motor Vehicles, Section 203. 2nd Edition, page 139.

Gibbons vs. Ogden, 9 Wheaton 1, 182, 189.

Slaughterhouse Cases, 16 Wallace 36-63.

Barbier vs. Connelly, 113 U. S. 27-28.

In re. Rahrer, 140 U. S. 545-554.

Hawker vs. New York, 170 U. S. 189-268-271-272-273.

City of New York vs. Miln, 11 Peters 102-103.

Hennington vs. Georgia, 163 U. S. 299-308.

Chicago N. W. R. W. Co. vs. Fuller, 84 U. S. (17 Wallace) 560-657-570.

Morgans L. & T. R. & S. Co. vs. Louisiana Board of Health, 118 U. S. 455-463-465.

Nashville C. & St. L. R. Co. vs. Alabama, 128 U. S. 96-99-100.

Sherlock vs. Alling, 93 U. S. 99-102.

Smith vs. Alabama, 124 U. S. 465.

Atlantic Coast Line vs. Georgia, 234 U. S. 286-291-293-294.

Chicago R. I. Railroad Co. vs. Arkansas, 219 U. S. 453.

Wilson vs. Black Bird Creek Marsh Co., 2 Peters 245-251-252.

Cooley vs. Board of Wardens of Philadelphia, 12 Howard 299-230.

The James Gray vs. The John Fraser, 21 Howard 184-187.

Lane vs. Oregon, 7 Wallace 71.

Stone vs. Mississippi, 101 U. S. 81.

Opinion of Attorney-General Gregory, May 7, 1917, unreported.

Transportation Company vs. Parkersburg, 107 U. S. 691-699

Huse vs. Glover, 119 U. S. 543-548-549.

Monongahela Navigation Co. vs. U. S., 148 U. S. 312-29-30.

Respectfully submitted,

ALEXANDER ARMSTRONG,

Attorney-General.

JOHNSON v. STATE OF MARYLAND.

ERROR TO THE CIRCUIT COURT OF FREDERICK COUNTY, STATE OF MARYLAND.

No. 289. Argued October 18, 1920.—Decided November 8, 1920.

A law of a State penalizing those who operate motor trucks on highways without having obtained licenses based on examination of competency and payment of a fee, can not constitutionally apply to an employee of the Post Office Department while engaged in driving a government motor-truck over a post-road in the performance of his official duty. P. 55.

Reversed.

THIS was a prosecution based on § 143 of Art. 56 of the Code of Public General Laws of Maryland, as amended by c. 85, Acts of 1918. The opinion states the case.

Mr. W. C. Herron, with whom *Mr. Assistant Attorney General Stewart* and *Mr. H. S. Ridgely* were on the brief, for plaintiff in error:

To assert that there may be reasonable regulation of a federal operation or agency by a State acting under its police power, is to deny the complete sovereignty of the Federal Government in the discharge of its constitutional functions. *McCulloch* v. *Maryland*, 4 Wheat. 316, 429, 431, 432, 436; *Tennessee* v. *Davis*, 100 U. S. 257, 263; *Henderson* v. *Mayor*, 92 U. S. 259, 271, 272; *Weston* v. *Charleston*, 2 Pet. 448, 467; *Society of Savings* v. *Coite*, 6 Wall. 594, 604; *Osborn* v. *Bank of the United States*, 9 Wheat. 738, 867.

If the taxing power of the State may not be exerted over federal operations and instrumentalities because of the supremacy of the Federal Government in the field of its constitutional authority, then obviously and for the same

reason is the State forbidden to exert any regulative control. *Ohio* v. *Thomas*, 173 U. S. 276, 283; *Flaherty* v. *Hanson*, 215 U. S. 515; *In re Neagle*, 135 U. S. 1; *Pembina Mining Co.* v. *Pennsylvania*, 125 U. S. 181, 186; *In re Waite*, 81 Fed. Rep. 359; *Farmers & Mechanics Savings Bank* v. *Minnesota*, 232 U. S. 516, 526; *Boske* v. *Comingore*, 177 U. S. 459; *Williams* v. *Talladega*, 226 U. S. 404; *United States* v. *Ansonia Co.*, 218 U. S. 452; *Holmes* v. *Jennison*, 14 Pet. 540; *In re Loney*, 134 U. S. 372; *Western Union Telegraph Co.* v. *Brown*, 234 U. S. 542.

If the State possesses power to determine qualifications of plaintiff in error, then it likewise possesses power to levy a tax upon him for revenue or other purposes. *McCulloch* v. *Maryland*, *supra*, 429; *Shaffer* v. *Carter*, 252 U. S. 37, 50; *Mugler* v. *Kansas*, 123 U. S. 623, 659; *In re Rahrer*, 140 U. S. 545, 554. The power of taxation is coextensive with sovereignty, and as the police power can not be more extensive than sovereignty, the police and taxation powers must be coequal. From this it necessarily follows that the absence of power to levy a tax upon a federal employee or agency as such equally forbids the exercise of the police power to control the official operations of such employee or agency. *Dobbins* v. *Erie County*, 16 Pet. 435, 447–448; *Transportation Co.* v. *Wheeling*, 99 U. S. 273, 279, 283.

The Maryland statute is open to the objection that it seeks to determine the fitness of, with reserved power to deny, a means adopted by Congress in executing its constitutional power to establish post offices and post roads. *McCulloch* v. *Maryland*, *supra*, 413, 414; *Fairbank* v. *United States*, 181 U. S. 283, 287, 288.

While the State possesses the right to make a charge for the road facilities which it furnishes, its power to regulate and control the use of such roads can not, by virtue of its ownership of such roads, be more extensive than its police power, for such latter power is as broad as its sovereignty.

Hendrick v. *Maryland*, 235 U. S. 610; *Kane* v. *New Jersey*, 242 U. S. 160, 168. It follows that if the State's ownership of its roads does not deprive Congress of the power to supplant state regulative laws with respect to the use of those roads as instruments of interstate commerce, then upon the same principle the state power must be subordinate to the exercise of any other constitutional power. *In re Rahrer*, *supra*, 555, 556; *Second Employers' Liability Cases*, 223 U. S. 1, 54. Were the rule otherwise the constitutional power to establish post offices and post roads, which of course embraces provisions for the transportation of the mails, would, to a considerable degree, depend for its efficient exercise upon the will of the State; for while its highways are post roads (*Western Union Telegraph Co.* v. *Richmond*, 224 U. S. 160, 165; *Essex* v. *New England Telegraph Co.*, 239 U. S. 313, 321), nevertheless the State could dictate the terms upon which the mails could be transported over them. The federal constitutional power recognizes no such dependence.

Plaintiff in error possessed the right secured to him by the Constitution and laws of the United States to engage in the employment here drawn in issue without compliance with the laws of Maryland. *Slaughter-House Cases*, 16 Wall. 36, 79. In *Hawker* v. *New York*, 170 U. S. 189, this court recognized the right of a State to require, as a condition precedent to the practice of medicine, a demonstration of the qualifications of the applicant. Will it be contended that a physician may not enter, e. g., the service of the Federal Army as a physician on duty within the boundaries of a State until he has first met the requirements of the state law?

The judicial decisions upholding state exertions of police power affecting interstate commerce can not be used as authority for the assertion that the State may exert a like power with respect to the establishment of post offices and post roads.

Mr. Alexander Armstrong, Attorney General of the State of Maryland, and *Mr. J. Purdon Wright*, with whom *Mr. Lindsay C. Spencer*, Assistant Attorney General of the State of Maryland, was on the brief, for defendant in error:

The regulation in question is enacted in pursuance of the police power and its object is to protect the life and property of persons using the highways of the State by preventing the operation of automobiles by incompetent persons.

A person employed by the United States to perform the service authorized by its laws and in connection with its property is subject to state control as to the method by which he shall perform such service in a State. If he is guilty of wilful misconduct or negligence, while performing such duty, he is liable in damages, for the laws of the United States do not authorize him to perform his duties in a negligent manner, and he is liable for all damages that may result from an unauthorized act. *Little* v. *Barreme*, 2 Cranch, 170; *Mitchell* v. *Harmony*, 13 How. 115; *Commonwealth* v. *Closson*, 229 Massachusetts, 329.

It would seem to follow that, if a State may insure against the improper use upon its highways of a vehicle of the United States Government, by a prosecution of the person improperly using it thereon, it may accomplish the same object by requiring proof of the competence of such person to use such vehicle properly upon those highways as a condition precedent to his being permitted to operate it thereon. 28 Ops. Atty. Gen. 604.

The State can constitutionally exact the payment of a license fee such as is required by the law under discussion, whether such fee is considered as a reasonable fee for the services of the state officials charged with the issuance of licenses or as compensation exacted by the State for the use of its road facilities. 28 Ops. Atty. Gen. 604; *Hendrick* v. *Maryland*, 235 U. S. 610; *Searight* v. *Stokes*, 3 How. 151;

Dickey v. *May.* ., *etc., Co.*, 7 Dana, 113. [Counsel also referred to an unreported opinion of the Attorney Gener rendered after the decision in *Hen.rick* v. *Maryland*, in disagreement with the view expressed in 28 Ops. Gen. 604, upon the power to exact a license fee.]

MR. JUSTICE HOLMES delivered the opinion of the court.

The plaintiff in error was an employee of the Post Office Department of the United States and while driving a government truck in the transportation of mail over a post road from Mt. Airy, Maryland, to Washington, was arrested in Maryland, and was tried, convicted and fined for so driving without having obtained a licens. from the State. He saved his constitutional rights by motion to quash, by special pleas which were overruled upon demurrer and by motion in arrest of judgment. The facts were admitted and the naked question is whether the State has power to require such an employee to obtain a license by submitting to an examination concerning his competence and paying three dollars, before performing his official duty in obedience to superior command.

The cases upon the regulation of interstate commerce can not be relied upon as furnishing an answer. They deal with the conduct of private persons in matters in which the States as well as the general government have an interest and which would be wholly under the control of the States but for the supervening destination and the ultimate purpose of the acts. Here the question is whether the State can interrupt the acts of the general government itself. With regard to taxation, no matter how reasonable, or how universal and undiscriminating, the State's inability to interfere has been regarded as established since *McCulloch* v. *Maryland*, 4 Wheat. 316. The decision in that case was not put upon any consideration of degree but upon the entire absence of power on the part of the

States to touch, in that way at least, the instrumentalities of the United States; 4 Wheat. 429, 430; and that is the law today. *Farmers & Mechanics Savings Bank* v. *Minnesota*, 232 U. S. 516, 525, 526. A little later the scope of the proposition as then understood was indicated in *Osborn* v. *Bank of the United States*, 9 Wheat. 738, 867. "Can a contractor for supplying a military post with provisions, be restrained from making purchases within any State, or from transporting the provisions to the place at which the troops were stationed? or could he be fined or taxed for doing so? We have not yet heard these questions answered in the affirmative." In more recent days the principle was applied when the governor of a soldiers' home was convicted for disregard of a state law concerning the use of oleomargarine, while furnishing it to the inmates of the home as part of their rations. It was said that the federal officer was not "subject to the jurisdiction of the State in regard to those very matters of administration which are thus approved by Federal authority." *Ohio* v. *Thomas*, 173 U. S. 276, 283. It seems to us that the foregoing decisions establish the law governing this case.

Of course an employee of the United States does not secure a general immunity from state law while acting in the course of his employment. That was decided long ago by Mr. Justice Washington in *United States* v. *Hart*, Pet. C. C. 390. 5 Ops. Atty. Gen. 554. It very well may be that, when the United States has not spoken, the subjection to local law would extend to general rules that might affect incidentally the mode of carrying out the employment—as, for instance, a statute or ordinance regulating the mode of turning at the corners of streets. *Commonwealth* v. *Closson*, 229 Massachusetts, 329. This might stand on much the same footing as liability under the common law of a State to a person injured by the driver's negligence. But even the most unquestionable and most universally applicable of state laws, such as those concern-

ing murder, will not be allowed to control the conduct of a marshal of the United States acting under and in pursuance of the laws of the United States. *In re Neagle*, 135 U. S. 1.

It seems to us that the immunity of the instruments of the United States from state control in the performance of their duties extends to a requirement that they desist from performance until they satisfy a state officer upon examination that they are competent for a necessary part of them and pay a fee for permission to go on. Such a requirement does not merely touch the Government servants remotely by a general rule of conduct; it lays hold of them in their specific attempt to obey orders and requires qualifications in addition to those that the Government has pronounced sufficient. It is the duty of the Department to employ persons competent for their work and that duty it must be presumed has been performed. *Keim* v. *United States*, 177 U. S. 290, 293.

Judgment reversed.

MR. JUSTICE PITNEY and MR. JUSTICE MCREYNOLDS dissent.